

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Karen J. Connelly and S.Y.K., LLC,

Civil No. 04-4559 (DWF/SRN)

Plaintiffs,

v.

**MEMORANDUM  
OPINION AND ORDER**

ValueVision Media, Inc. d/b/a ShopNBC,

Defendant.

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Daniel Q. Poretti, Esq., and Douglas J. Frederick, Esq., Rider Bennett, LLP, 2000 Metro Center, 333 South Seventh Street, Minneapolis, MN 55402, counsel for Plaintiffs.

Kevin D. Conneely, Esq., and Eric D. Paulsrud, Esq., Leonard Street and Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402, counsel for Defendant.

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**Introduction**

The above-entitled matter was brought before the undersigned United States District Judge on November 5, 2004, pursuant to Plaintiffs Karen J. Connelly's and S.Y.K., LLC's (collectively "Plaintiffs") Motion for Temporary Restraining Order or a Preliminary Injunction. Specifically, Plaintiffs request that this Court enter a temporary restraining order or preliminary injunction requiring Defendant ValueVision Media, Inc. d/b/a ShopNBC ("ShopNBC") to immediately cease its allegedly unauthorized use of the "Sincerely Yours, Karen" mark, and to immediately cease use of the allegedly confusingly similar term "Sincerely Yours." For the reasons set forth below, the Court grants Plaintiffs' Motion for Temporary Restraining Order.

## **Background**

Plaintiff Karen J. Connelly is a television program host who has worked in the home shopping industry for companies such as the Home Shopping Club, the Cable Value Network and USA Direct. Connelly has sold a variety of products, but has focused primarily on selling jewelry. Connelly has worked in the industry for 20 years and is one of the industry's original hosts.

ShopNBC is a television and Internet shopping network that sells a variety of products to consumers. ShopNBC buys and resells vendors' products, such as jewelry, consumer electronics, apparel, and health and beauty items. ShopNBC provides air time and web space to promote and resell these products.

In 1992, Connelly began working as an on-air television host with ShopNBC. Plaintiffs claim that Connelly hosted the first program on ShopNBC to achieve over \$1 million of sales in one hour and that she was recognized by ShopNBC as the top sales host. Connelly and ShopNBC entered into a written employment agreement effective as of November 8, 1999 (the "1999 Agreement"). The 1999 Agreement contained a provision addressing ownership of intellectual property:

8: Inventions and Patents. Employee agrees that all inventions, innovations or improvements in the method of conducting Employer's business or otherwise related to Employer's business (including new contributions, improvements, ideas and discoveries, whether patentable or not or otherwise protectable by copyright, trademark, common law or trade secret law) conceived or made by Employee during the employment period belong to the Employer. Employee will promptly disclose such inventions, innovations and improvements to Employer and perform all actions reasonably requested by Employer to establish and confirm such ownership.

(See Affidavit of Karen J. Connelly in Support of Plaintiffs' Motion for a Temporary Restraining Order or a Preliminary Injunction ("Connelly Aff."), Ex. C ¶ 8.) The 1999 Agreement also

contained a non-competition provision prohibiting Connelly from owning or participating in a “Restricted Business.” (*See* Connelly Aff., Ex. C ¶ 9.)

According to Plaintiffs, in February 2002, Connelly began to consider designing her own jewelry line and Plaintiffs claim that because Connelly thought her contemplated business might be a “Restricted Business” under the 1999 Agreement, she approached ShopNBC. Plaintiffs claim that Connelly met with Gene McCaffery, the Chief Executive of ShopNBC, to discuss her business idea and the possibility of becoming a vendor of ShopNBC. During this meeting, Plaintiffs claim that Connelly told McCaffery that it would be necessary to restructure the terms of the 1999 Agreement to address the fact that she would be operating an outside business. In addition, Plaintiffs claim that Connelly informed McCaffery that she had selected “Sincerely Yours, Karen” as a name for her prospective jewelry line. Plaintiffs also claim that Connelly showed McCaffery sketches of the prospective line and that McCaffery gave Connelly his “blessings and said that she should be sure to ‘own’ it.” (Connelly Aff. ¶ 14.)

On or about April 8, 2002, Plaintiffs assert that Connelly made a formal presentation to executives at ShopNBC and Limited Editions, Inc., the future manufacturer of the “Sincerely Yours, Karen” jewelry line. Plaintiffs claim that after this meeting, the parties acknowledged that Connelly would establish her own business entity and develop her own line of jewelry, which would be manufactured by Limited Editions, Inc., sold to ShopNBC, and then resold on a ShopNBC show hosted by Connelly.

Plaintiffs assert that the “Sincerely Yours, Karen” business was Connelly’s own endeavor. Plaintiffs also assert that Connelly was never instructed or paid by ShopNBC to work on “Sincerely

Yours, Karen” designs. In contrast, ShopNBC claims that Connelly’s bonus calculations in 2002 and 2003 included all on-air sales of “Sincerely Yours, Karen” and “Sincerely Yours” jewelry. (*See* Declaration of Frank Elsenbast ¶ 6.)

In April 2002, Connelly and ShopNBC began negotiating a new employment agreement. Connelly claims the purpose of the negotiations was to address her outside business endeavor. Plaintiffs claim that throughout these negotiations, Connelly made it known that she would own her new jewelry line. In June 2002, Connelly applied to register the trademarks “Sincerely Yours, Karen” and “Karen Connelly” with the United States Patent and Trademark Office and claims to have spoken openly about her alleged ownership of those marks. ShopNBC claims that it never authorized the filing of the trademark application and did not receive notice of it until after Connelly’s departure. In August 2002, during the continuing contract negotiations, Connelly started a business entity named S.Y.K., LLC.

On October 3, 2002, as the defined three-year term of the 1999 Agreement was nearing its end, Connelly and ShopNBC entered into a new employment agreement (the “2002 Agreement”). (*See* Connelly Aff. Ex. H.) In paragraph 8 of the 2002 Agreement, the parties created an exception to the intellectual property that was to belong to ShopNBC. This exception covered “all inventions or innovations developed by Employee solely as part of her involvement with Outside Interests (as that term is elsewhere defined in the 2002 Agreement).” (*Id.* Ex. H ¶ 8.) In paragraph 9(c), the parties defined “Outside Interests” in part as “the business that she owns, which is a business engaged in the sale of jewelry . . . on television and through the internet [sic].” (*Id.* at ¶ 9(c).) Further, the parties agreed that “Employer consents to Employee’s ownership and participation in the above described

Outsider Interest.” (*Id.*)

On October 12, 2002, the “Sincerely Yours, Karen” program first aired. ShopNBC contends that it spent significant time and money promoting “Sincerely Yours, Karen” products. On July 23, 2004, Connelly resigned from her ShopNBC position. Since her resignation, Connelly has not appeared as an on-air host for any shopping network and continues to be subject to a six-month non-compete provision. When the non-competition period expires in 2005, Connelly plans to sell the “Sincerely Yours, Karen” collection on a network that will compete with ShopNBC. After Connelly’s resignation, ShopNBC continued to air the program “Sincerely Yours, Karen” and to sell and promote jewelry under the “Sincerely Yours, Karen” mark. At some point, ShopNBC shortened the name of the program to “Sincerely Yours.” On October 1 and 2, 2004, Plaintiffs claim that ShopNBC aired a “Sincerely Yours” show which was advertised as an “Anniversary” show. Plaintiffs contend that the show was the anniversary of the “Sincerely Yours, Karen” program.

Currently, ShopNBC claims that it has 1,361 pieces of “Sincerely Yours, Karen” pieces of jewelry in stock, with an average retail price of \$664.00 each. ShopNBC expects net sales for these pieces to total over \$50,000 in November 2004, just under \$50,000 in December 2005, and over \$98,000 in January 2005. (*See* Declaration of Elizabeth Fehr at ¶¶ 9, 11.) Additional programming is planned through January 2005.

Plaintiffs claim that Connelly has received calls from consumers who were allegedly confused as to why she was not hosting the program. On September 7, 2004, Connelly demanded that ShopNBC cease using the “Sincerely Yours, Karen” mark and cease using any marks confusingly similar to the “Sincerely Yours, Karen” mark, including the term “Sincerely Yours.”

On October 22, 2004, Plaintiffs filed a complaint asserting causes of action for trademark infringement (Count I), false advertising (Count II), deceptive trade practices (Count III), consumer fraud (Count IV), unlawful trade practices (Count V), misappropriation of right of publicity (Count VI), common law unfair competition (Count VII), and tortious and intentional interference (Count VIII). Plaintiffs now move the Court for a temporary restraining order or preliminary injunction requiring ShopNBC to immediately cease use of the terms “Sincerely Yours, Karen” and “Sincerely Yours.”

## **Discussion**

### **I. Standard of Review**

Under Eighth Circuit precedent, a temporary restraining order may be granted only if the moving party can demonstrate: (1) that the movant will suffer irreparable harm absent the restraining order; (2) that the balance of harms favors the movant; (3) that the public interest favors the movant; and (4) a likelihood of success on the merits. *See Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8<sup>th</sup> Cir. 1981). None of the factors by itself is determinative; rather, in each case the factors must be balanced to determine whether they tilt toward or away from granting injunctive relief. *See West Pub. Co. v. Mead Data Cent., Inc.*, 799 F.2d 1219, 1222 (8<sup>th</sup> Cir. 1986), *cert. denied*, 479 U.S. 1070 (1987). The party requesting the injunctive relief bears the “complete burden” of proving all the factors listed above. *Gelco Corp. v. Coniston Partners*, 811 F.2d 414, 418 (8<sup>th</sup> Cir. 1987).

### A. Likelihood of Success on the Merits

The Court will first consider Connelly's likelihood of success on the merits. This factor requires that the movant establish a substantial probability of success on the merits of its claim. *See Dataphase*, 640 F.2d at 114. The parties have focused their analysis on Plaintiffs' claim that ShopNBC violated the Lanham Act, 15 U.S.C. § 1125(a), *et seq.*<sup>1</sup> The Lanham Act provides that:

- (1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading misrepresentation of fact, which--
  - (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or . . .

15 U.S.C. § 1125(a)(1). To succeed on its trademark infringement claim, Plaintiffs must show ownership of a valid trademark and that ShopNBC's use of the allegedly infringing mark creates a likelihood of confusion. *See Hubbard Feeds, Inc. v. Animal Feed Supplement, Inc.*, 182 F.3d 598, 601 (8<sup>th</sup> Cir. 1999).

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<sup>1</sup> Plaintiffs also argue that it is likely to succeed on the merits of its deceptive trade practices claim. Because that claim mirrors the Lanham Act claim, they are considered together. *See DaimlerChrysler AG v. Bloom*, 315 F.3d 932, 936 n.3 (8th Cir. 2003). The Court does not consider the likelihood of success on the merits of Plaintiffs' additional causes of action.

## **1. Validity of the Mark**

Courts classify marks into one of four categories: (1) generic; (2) descriptive; (3) suggestive; and (4) arbitrary or fanciful. *See Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 9 (2d Cir. 1976). Suggestive, arbitrary, and fanciful marks are “inherently distinctive.” *See Stuart Hall Co., Inc. v. Ampad Corp.*, 51 F.3d 780, 785 (8th Cir. 1995). Inherently distinctive marks are entitled to immediate protection. *See Co-Rect Prods., Inc. v. Marvy! Adver. Photography, Inc.*, 780 F.2d 1324, 1329 (8<sup>th</sup> Cir. 1985). The Court finds that the “Sincerely Yours, Karen” mark when used to describe jewelry is arbitrary because it uses common words that are applied to products in an unfamiliar way. *See Intsy\*Bit, Inc. v. Poly-Tech Indus., Inc.*, 95 F.3d 663, 673 n.10 (8<sup>th</sup> Cir. 1996). Therefore, the “Sincerely Yours, Karen” mark is inherently distinctive and entitled to protection.

## **2. Ownership of the Mark**

The parties dispute who owns the “Sincerely Yours, Karen” mark. Plaintiffs assert that they own the “Sincerely Yours, Karen” mark because: (1) Connelly was the first person to make actual use of the mark; (2) any use of the “Sincerely Yours, Karen” mark by ShopNBC or Limited Editions, Inc. inured to the benefit of Plaintiffs; and (3) in the 2002 Agreement, ShopNBC acknowledged that all rights to Connelly’s “Sincerely Yours, Karen” business belonged to Connelly. Plaintiffs assert that in the 2002 Agreement, ShopNBC acknowledged that all rights to Connelly’s “Sincerely Yours, Karen” business was owned by Connelly. Connelly points to the language of section 9(c), which exempts Connelly’s “Outside Interests” from being considered a “Restricted Business”:



Notwithstanding Section 9(a) above, Employer understands and agrees that Employee may do any of the items specified in paragraph 9(a) with respect to the business that she owns, which is a business engaged in the sale of jewelry and related consumer products on television and through the internet and through other means of distribution (this business, and any other businesses approved by Employer, as set forth below, shall be referred to as “Outside Interest(s)”). Employer consents to Employee’s ownership and participation in the above described Outside Interests. . . .

(Connelly Aff. Ex H. ¶ 9(c).) Moreover, Connelly asserts that when ShopNBC signed the 2002 Agreement, it specifically acknowledged that Connelly retained the intellectual property rights developed in connection with her “Outside Interests”:

Inventions and Patents. Except for those inventions or innovations developed by Employee solely as part of her involvement with Outside Interests . . . , Employee agrees that all inventions, innovations or improvements . . . belong to Employer. . . .

(*Id.* Ex. H. ¶ 8.) Connelly also asserts that all parties knew and understood that the business referred to in the 2002 Agreement was her business related to the “Sincerely Yours, Karen” jewelry line.

ShopNBC asserts that it owns the “Sincerely Yours, Karen” mark. Specifically, ShopNBC claims that because the first use of the “Sincerely Yours, Karen” mark occurred on October 1, 2002, the 1999 Agreement was in force and, under that agreement, any intellectual property rights created by Connelly are the property of ShopNBC. In the alternative, ShopNBC asserts that under the 2002 Agreement, rights to the “Sincerely Yours, Karen” mark also belong to ShopNBC. ShopNBC claims that the exception for “inventions or innovations developed by Employee solely as part of her involvement in Outsider Interest” does not apply to the “Sincerely Yours, Karen” mark. According to ShopNBC, “Outside Interests” do not include improvements in the method of conducting ShopNBC’s business and the “Sincerely Yours, Karen” mark was not created “solely” as part of Connelly’s involvement of “Outside Interests.”

The Court finds ShopNBC's argument with respect to ownership of "Sincerely Yours, Karen" mark unpersuasive. The Court finds that the language of the 2002 Agreement specifically acknowledged that Connelly's participation in the "Sincerely Yours, Karen" endeavor was outside of the Agreement and also recognized that Connelly would own the trademarks related to the "Sincerely Yours, Karen" business. At a minimum, the term "Outside Interests" is ambiguous and the parol evidence of the parties' discussions and negotiations leading up to the execution of the 2002 Agreement support the conclusion that the 2002 Agreement specifically contemplated and excluded Connelly's "Sincerely Yours, Karen" business. That the 2002 Agreement was not executed until October 3, 2004, does not operate to nullify the parties' understanding that the "Sincerely Yours, Karen" business was to belong to Connelly. Therefore, the Court finds that Connelly is likely to succeed in demonstrating that she is the owner of the "Sincerely Yours, Karen" mark.

### **3. Likelihood of Confusion**

The Court will examine the likelihood of confusion under the Eighth Circuit's analysis in *SquirtCo v. Seven-Up Co.*, 628 F.2d 1086 (1980). This analysis considers: (1) the strength of the owner's trademark; (2) the similarity between the parties' marks; (3) the products' competitive proximity; (4) the alleged infringer's intent to pass off its goods as those of the mark owner; (5) incidents of actual confusion; and (6) the type of product, its cost and the conditions of purchase and the degree of care to be exercised by potential customers. *Id.* at 1091.<sup>2</sup>

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<sup>2</sup> Plaintiffs claim that ShopNBC had an implied license to use the "Sincerely Yours, Karen" mark. As such, Plaintiffs assert that because ShopNBC continued to use the "Sincerely Yours, Karen" mark, the quantum of proof necessary to demonstrate a likelihood of confusion is less. The Court declines to rule on this issue at this time.

First, the strength of a mark generally depends on the distinctiveness of the mark and the extent to which the mark is recognized by the relevant consumer class. *See Aveda Corp. v. Evita Mktg., Inc.*, 706 F. Supp. 1419, 1428 (D. Minn. 1989)(MacLaughlin, J.). A strong and distinctive mark is entitled to greater protection than a weak mark. *See SquirtCo*, 628 F.2d at 1091. The Court has already determined that the mark “Sincerely Yours, Karen” mark is arbitrary and as such is entitled to greater protection. In addition, the Court is convinced that Plaintiffs are likely to be able to demonstrate that members of the relevant consumer class recognize the “Sincerely Yours, Karen” mark as identifying Plaintiffs as the source of jewelry. Therefore, this factor weighs in favor of a finding of infringement.

Second, there is no dispute that ShopNBC used the “Sincerely Yours, Karen” mark in its identical form after Connelly left ShopNBC. Moreover, the Court is convinced that Plaintiffs will likely be able to demonstrate that “Sincerely Yours” is substantially similar to the “Sincerely Yours, Karen” mark, as it shares the dominant features of the “Sincerely Yours, Karen” mark and is used to sell similar goods in the same marketplace. Therefore, the similarity between the marks weighs in favor of a finding of infringement.

Third, when Connelly’s covenant not to compete expires in 2005, Connelly plans to directly compete with ShopNBC. Therefore, the competitive proximity factor weighs in favor of a finding of infringement.

Fourth, intent on the part of an alleged infringer to pass off its goods as those of another raises an inference of likelihood of confusion. *See SquirtCo*, 628 F.2d at 1091. Here, the parties had a prior relationship and ShopNBC chose to use the “Sincerely Yours, Karen” and “Sincerely Yours” marks

after that relationship ended. Moreover, ShopNBC aired a show that was advertised as an anniversary show, thus implying a relationship with the “Sincerely Yours, Karen” program. Plaintiffs will therefore likely be able to demonstrate that ShopNBC intended to benefit from its former affiliation with Connelly. This factor weighs in favor a finding and raises an inference of infringement.

Fifth, Plaintiffs have submitted evidence of instances of alleged actual confusion in the marketplace. Actual confusion is “positive proof of likelihood of confusion.” *SquirtCo.*, 628 F.2d at 1091. Plaintiffs have submitted copies of web pages containing the comments of consumers who had posted messages on an Internet discussion forum. (*See Connelly. Aff. Ex. N.*) A sampling of these comments read:

Anyone else watching? Lynne said this line will continue on NBC from the same design house. Huh? Does this mean that Karen never designed this jewelry? So she owns Sincerely Yours Karen, but not Sincerely Yours. Kind of confusing.

I watched part of the show. Confusing to say the least. What happened to Karen? They put every item on sale. They offer free sizing. I guess the line was never Karen's.

(*See Connelly. Aff. Ex. N.*) Based on its review of the evidence, the Court finds that the incidents of actual confusion, while thus far not overwhelming, do indicate that at least some consumers have been confused by ShopNBC's continued use of the “Sincerely Yours, Karen” mark. Therefore, this factor weighs in favor of a finding of infringement.

Finally, the Court considers the degree of care exercised by consumers. The unique nature of home shopping, where consumers do not actually inspect items prior to purchase, makes it likely that home shoppers are subject to impulse buying. *See, e.g., Something Old, Something New, Inc. v. QVC, Inc.*, 53 U.S.P.Q.2d 1715, 1724 (S.D.N.Y. 1999). Even considering that Plaintiffs' products

are not inexpensive (ranging from a few hundred to thousands of dollars), the Court believes that the nature of home shopping tips this factor in favor of a likelihood of infringement. The Court concludes that with the record presently before the Court, Plaintiffs are likely to succeed on their claim of trademark infringement.

## **B. Irreparable Harm**

The movant must establish that irreparable harm will result if injunctive relief is not granted and that such harm will not be compensable by money damages. *See Packard Elevator v. I.C.C.*, 782 F.2d 112, 115 (8<sup>th</sup> Cir. 1986). Plaintiffs assert that they will continue to suffer irreparable harm if ShopNBC is not enjoined. Specifically, Plaintiffs assert that ShopNBC's continued use of the "Sincerely Yours, Karen" and "Sincerely Yours" marks is harming Plaintiffs' ability to control the quality of the goods being sold under the mark and is causing consumers to question whether Connelly actually owns and controls her jewelry line.

ShopNBC asserts that Plaintiffs have failed to establish that they will suffer irreparable harm during the time the restraining order will be in effect. Specifically, ShopNBC claims that because Connelly cannot compete with ShopNBC until the expiration of the non-compete, Plaintiffs will not lose any sales revenue or customers. In addition, ShopNBC denies that the quality of the jewelry it is selling is of inferior quality and claims that any difference in quality is irrelevant because Connelly is already associated with the jewelry ShopNBC is selling. ShopNBC also claims that Plaintiffs have failed to show that money damages would be inadequate. Finally, ShopNBC claims that Plaintiffs' delay of roughly three months in bringing this action also demonstrates that there is no irreparable harm.

Irreparable harm is presumed because the Court has already decided that Plaintiffs have demonstrated a showing of likelihood of confusion. *See Mutual of Omaha Ins. Co. v. Novak*, 836 F.2d 397, 403 n.11 (8<sup>th</sup> Cir. 1987). Even without a presumption, the Court finds that ShopNBC's continued use of the "Sincerely Yours, Karen" and "Sincerely Yours" marks will cause Plaintiffs to lose control over Connelly's reputation and the goodwill associated with the "Sincerely Yours, Karen" mark. Plaintiffs have submitted evidence that consumers are confused about who owns the "Sincerely Yours, Karen" jewelry line, who designed it, and whether Connelly will continue to sell it. (*See Connelly Aff.* ¶ 56.) Further, a delay of three months under the circumstances presented does not negate the presumption of irreparable harm. *See, e.g., Kadant, Inc. v. Seeley Machine, Inc.*, 244 F. Supp. 2d 19 (N.D.N.Y. 2003) (holding that delay of approximately four months does not justify usurping a finding of likelihood of confusion or irreparable harm).

### **C. Balance of Harms**

The next *Dataphase* factor to be considered is whether the harm to the movant in the absence of injunctive relief outweighs the potential harm that granting injunctive relief may cause to the non-movant. *See Dataphase*, 640 F.2d at 114. Here, Plaintiffs assert that because they are the rightful owners of the mark and the potential harm to Plaintiffs' reputation and goodwill outweighs any harm done to ShopNBC, the balance of harms favors injunctive relief.

ShopNBC contends that granting a temporary restraining order in this case will reverse the status quo since ShopNBC was authorized to sell the "Sincerely Yours, Karen" jewelry line for two years prior to Connelly's departure. ShopNBC claims that it will suffer harm because it will be forced to forgo marketing and selling this jewelry during a lucrative selling period. ShopNBC asserts, on the

other hand, that Plaintiffs will suffer minimal harm if ShopNBC's sales continue. While the Court is not unsympathetic to the concerns of ShopNBC, because Plaintiffs have demonstrated a likelihood of confusion in the marketplace, the balance of harms tips in their favor.

#### **D. Public Interest**

The final *Dataphase* factor to be considered by a court is whether injunctive relief is in the public's interest. *See Dataphase*, 640 F.2d at 114. Plaintiffs assert that the public interest would be served by a temporary restraining order because confusion among consumers regarding the products would be avoided. In contrast, ShopNBC asserts the public interest in upholding valid covenants and contracts is paramount. The Court finds that since it has already determined that Plaintiffs have demonstrated a likelihood of success on the merits of its trademark infringement claim, the public interest is best served by issuing a temporary restraining order. Infringement of a trademark is inherently contrary to the public interest *See Am. Dairy Queen Corp. v. New Line Prods., Inc.*, 35 F. Supp. 2d 727, 733 (D. Minn. 1998) (Rosenbaum, J.).

The Court finds that it is appropriate for Plaintiffs to post bond of \$40,000.00.

#### **Conclusion**

The Court concludes that the grant of a temporary restraining order is warranted, but it also believes it is in the best interests of the parties to negotiate a resolution of this dispute. As the parties may already be aware, Magistrate Judge Franklin L. Noel is available to assist in the negotiation of a settlement should the parties find such services to be helpful. If the Court may be of assistance in this matter, the parties should contact Lowell Lindquist, Calendar Clerk for Judge Donovan Frank, at 651-

848-1296, or Cathy Orlando, Calendar Clerk for Magistrate Judge Franklin L. Noel, at 612-664-5110.

For the reasons stated, **LET IT BE ORDERED THAT:**

1. Plaintiffs Karen J. Connelly's and S.Y.K., LLC's Motion for Temporary Restraining Order (Doc. No. 2) is **GRANTED** as follows.

a. Defendant ShopNBC, its agents, servants, representatives, successors, assigns, and others in active concert or participation with it, are hereby temporarily enjoined from using the "Sincerely Yours, Karen" mark, or any other mark confusingly similar to the "Sincerely Yours, Karen" mark, including the term "Sincerely Yours," in connection with any service or products associated with jewelry or the sale of jewelry.

2. Plaintiffs shall post a bond in the amount of \$40,000.00 within ten (10) days of this Order.

Dated: November 9, 2004

s/Donovan W. Frank  
DONOVAN W. FRANK  
Judge of United States District Court